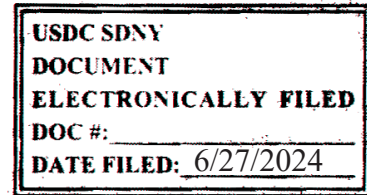


**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**



-----X  
**GARY KEMP,**

**Petitioner,**

**20-CV-09121 (RA)(SN)**

**-against-**

**ORDER**

**JOSEPH NOETH,**

**Respondent.**

-----X  
**SARAH NETBURN, United States Magistrate Judge:**

This habeas petition has had a tortured history. Most recently, the Court granted the Respondent's request to stay the proceeding because some of the Petitioner's claims are currently under consideration before the State trial court pursuant to Petitioner's CPL § 440.10 motion. See June 11, 2024 Text Order at ECF No. 79.

On June 17, 2024, the Court received from the Petitioner a motion pursuant to CPL § 440.10, asking this Court to vacate his state conviction. Petitioner cannot bring a § 440.10 motion in federal court; such motion can be filed only in state court. This Court has authority to consider only whether Petitioner is in custody pursuant to a State judgment in violation of the Constitutional or laws of the United States. 28 U.S.C. § 2254. Accordingly, to the extent Petitioner intended to seek certain relief in this federal Court by way of a motion brought under CPL § 440.10, that motion is denied as procedurally improper.

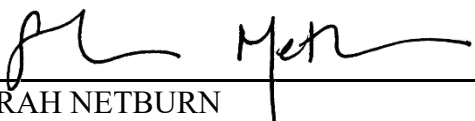
Separately, the Court directed Petitioner to file a letter stating whether he consents to, or opposes, the stay while his motion in State court is pending. That letter was due by June 21, 2024. The Court has not received any letter.

**CONCLUSION**

The Court denies Petitioner's motion pursuant to CPL § 440.10 as procedurally improper. The stay remains in effect and the parties are directed to notify this Court within two weeks of a final decision in State court and to propose a reasonable briefing schedule to address Petitioner's habeas claims.

The Clerk of Court is respectfully requested to terminate the motion at ECF No. 81.

**SO ORDERED.**

  
\_\_\_\_\_  
SARAH NETBURN  
United States Magistrate Judge

DATED: June 27, 2024  
New York, New York